

be mailed to the borrower early in the second month preceding the expiration date of the first year of the warranty period.

(3) If the County Supervisor or District Director does not hear from the borrower within 30 days, it can reasonably be assumed that no complaint exists or that any complaint has been satisfied unless information to the contrary has been received.

(4) If the borrower notifies FmHA or its successor agency under Public Law 103-354 that any complaint has not been satisfied, an onsite inspection shall be made as early as possible, but not later than 1 month preceding the expiration date of the first year of the warranty. The results of the inspection will be recorded on Form FmHA or its successor agency under Public Law 103-354 1924-12. If the borrower has complaints, the case should be handled in accordance with the provisions of subpart F of part 1924 of this chapter, or as otherwise provided in this subpart.

[52 FR 8002, Mar. 13, 1987, as amended at 54 FR 14334, Apr. 11, 1989]

§ 1924.13 Supplemental requirements for more complex construction.

This section includes additional provisions that apply to planning and conduct of construction work on all multiple family housing projects and other projects that are more extensive in scope and more complex in nature than individual housing units or farm buildings. This section will apply in addition to all other requirements contained elsewhere in this subpart.

(a) *Architectural services.* Complete architectural services, as defined in § 1924.4(o)(1) of this subpart are recommended on all projects. They are required for projects involving an LH grant and for all loans for RRH, RCH, and LH projects consisting of more than 4 units unless prior consent to making an exception to the requirements for complete architectural services is obtained from the National Office. If the applicant or contractor is an architect or organization with architectural capability, the applicant must, nevertheless, hire an independent qualified architect or architectural firm to inspect the construction work and perform other needed serv-

ices during the construction and warranty phases. See Guide 4, attachment 1, "Attachment to AIA Document—Standard Form of Agreement Between Owner and Architect," for further information (available in any FmHA or its successor agency under Public Law 103-354 office).

(1) *Exception.* Any request for National Office consent to an exception being made for complete architectural services should include the proposed drawings and specifications, method of providing specific services, the comments and recommendations of the FmHA or its successor agency under Public Law 103-354 State Architect, and any other pertinent information. The State Director must determine that any services for which an exception is requested can be performed by qualified State or District Office staff members.

(2) *Selecting the architect.* The applicant is responsible for selecting the architect. The District Director with the advice of the State architect/engineer should discuss with the applicant the selection of the architect for the job as early as possible to assist in the site selection and participate in early consultations regarding project scope and design.

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA or its successor agency under Public Law 103-354 financing is not involved. The fee should cover only the architectural services rendered by the architect. The reduction or elimination of any services described in paragraph (a)(5) of this section shall be directly reflected in the fee. Fees for special services rendered by the architects, such as the packaging of the loan application or additional nonarchitectural services, will not be authorized to be paid with loan funds.

(4) *Agreement between borrower and architect.* The borrower and the architect will execute a written agreement. The agreement must provide:

(i) The services listed in paragraph (a)(5) of this section.

(ii) The amount of the fee and how it will be determined and paid.

(iii) That the agreement and any amendments to the agreement shall not be in full force and effect until concurred with in writing by the State Director or the State Director's delegate, and it will contain the following provision:

The Farmers Home Administration or its successor agency under Public Law 103-354, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby concurs in the form, content and the execution of this agreement.

Date _____
FmHA or its successor agency under Public
Law 103-354 Approval Official _____
Title _____

(5) *Specific services.* Architectural services will include six consecutive phases as follows:

(i) *Schematic design phase.* The architect will:

(A) Consult with the applicant to obtain available information pertinent to the project requirements.

(B) Consult with FmHA or its successor agency under Public Law 103-354 State architect/engineer about FmHA or its successor agency under Public Law 103-354 requirements and procedures.

(C) Assist in preparing the project design after analyzing engineering and survey data on the site selected by applicant.

(D) Prepare schematic design studies consisting of drawings and other documents illustrating the scale and relationship of project components for the applicant's approval.

(E) Submit estimates of current development costs based on current area, volume, or other unit costs.

(F) When the applicant and FmHA or its successor agency under Public Law 103-354 have accepted the schematic design studies and estimated development costs, the project architect may be authorized to proceed with the next phase.

(ii) *Design development phase.* The architect will:

(A) Prepare the design development exhibits from the accepted schematic design studies for approval by the applicant. These exhibits should consist of drawings and other documents to fix and describe the size and character of

the entire project as to structural, mechanical, and electrical systems, materials, and other essentials as appropriate.

(B) Submit a further statement of probable construction cost.

(C) Obtain applicant and FmHA or its successor agency under Public Law 103-354 approval of drawings, specifications, and authorization to proceed with next phase.

(iii) *Construction documents phase.* The architect will:

(A) Prepare the working drawings and specifications from the approved design development drawings and set forth in detail the requirements for the construction of the entire project in accordance with applicable regulations and codes; for example, necessary bidding information, assistance in preparing bidding forms, conditions of the construction contract, and the form of agreement between applicant/owner and contractor.

(B) Submit a final and more comprehensive statement of probable development cost. It should show a breakdown of the estimated total development cost of the project and the various trades in enough detail for an adequate review.

(C) Obtain the acceptance of the applicant and FmHA or its successor agency under Public Law 103-354 for contract documents, including approval of the final drawings and specifications and authorization to proceed.

(D) Discuss with the applicant various items as they develop.

(iv) *Bidding or negotiation phase.* The architect will, as appropriate, for a bidded or negotiated contract:

(A) Assist in review and selection of bidders and submission of contract documents to selected bidders.

(B) Assist in the interpretation of drawings and specifications, and other contract documents.

(C) Receive and tabulate all bids.

(D) Review the bids and the negotiated proposals and assist in the award and preparation of construction contracts.

(v) *Construction phase.* This phase includes the administration of the construction contract. It will commence with the award of the construction contract and end when the borrower

makes final payment to the contractor. The architect will:

(A) Attend the preconstruction conference. Advise and consult with the borrower (or the borrower's representative) and issue the borrower's instructions to the contractor.

(B) Prepare change orders.

(C) Keep construction accounts and work as the general administrator of the project during construction.

(D) Interpret the contract documents and have the authority to reject all work and materials which do not comply.

(E) Review and approve shop drawings, samples, and other submissions of the contractor for conformance with the design concept and for compliance with the contract documents.

(F) Conduct periodic inspections of all phases of construction to determine compliance with the contract documents and certify as to the amount is in place and materials suitably stored on site for partial payment estimates. These inspections will be augmented, when necessary, by inspections performed by structural, mechanical, and electrical representatives. Periodic inspections should be made as frequently as is necessary to verify that the work conforms with the intent of the contract documents and that a high quality of workmanship is maintained. The State Director may require a full-time project representative on projects with a total development cost of \$750,000 or more, when in the opinion of the State Director there is a need for such representative, and the State Director states the reasons for such need to the borrower.

(G) Determine, based on the inspections, the dates of substantial completion and final completion; receive on the borrower's behalf all written guarantees and related documents assembled by the contractor; and issue a final certificate for payment.

(vi) *Warranty phase.* The architect will advise and consult with the borrower, as the borrower's representative, about items to be corrected within the warranty period. The architect will accompany the FmHA or its successor agency under Public Law 103-354 representative during the inspection

required one month prior to expiration of the warranty period.

(b) *Other professional services.* The State Director, on the recommendation of the State architect/engineer, may request that additional professional services be provided.

(1) Professional services typically include soils engineering, structural engineering, civil engineering, surveying, land planning, or professional cost estimation or certification. Fees for these services may be paid directly by the borrower or by the architect as reimbursable expenses.

(2) When a project representative is utilized, unless otherwise agreed, the representative will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the project representative to the applicant and to FmHA or its successor agency under Public Law 103-354 for acceptance in writing. If the applicant provided the project representative, the applicant must submit a resume of the representative's qualifications to the project architect/engineer and FmHA or its successor agency under Public Law 103-354 for acceptance in writing, prior to the preconstruction conference. The project representative will attend the preconstruction conference where duties and responsibilities will be fully discussed. The project representative will work under the general supervision of the architect/engineer. The project representative will maintain a daily diary in accordance with the following:

(i) The diary shall be maintained in a hard-bound book.

(ii) The diary shall have all pages numbered and all entries in ink.

(iii) All entries shall be on daily basis, beginning with the date and weather conditions.

(iv) Daily entries shall include daily work performed, number of men and equipment used in the performance of the work, and all significant happenings during the day.

(v) The diary shall be made available to FmHA or its successor agency under Public Law 103-354 personnel and will be reviewed during project inspections.

(vi) The project representative's diary will become the property of the owner after the project is accepted and final payments are made.

(c) *Drawings.* The type and kinds of drawings should be in accordance with exhibit C of this subpart and subpart D of part 1944 of this chapter.

(1) The drawings must be clear, accurate, with adequate dimensions and of sufficient scale for estimating purposes.

(2) Construction sections and large-scale details sufficient for accurate bidding and for the purpose of correlating all parts of the work should be part of the general drawings. This is particularly important where the size of a project makes necessary the preparation of the general drawings at a scale of 1/8 inch equals 1 foot or less.

(3) Mechanical and electrical work should be shown on separate plans.

(4) Schedules should be provided for doors, windows, finishes, electrical fixtures, finish hardware, and any other specialty items necessary to clarify drawings.

(d) *Specifications.* Trade-type specifications (specifications divided into sections for various trades) should be used. The specifications should be complete, clear, and concise, with adequate description of the various classes of work shown under the proper sections and headings.

(e) *Methods of administering construction.* Projects involving a total development cost of less than \$100,000 which do not include an LH grant may, with the approval of the State Director, follow the contract procedure in § 1924.6(a) of this subpart without modification. Construction of all other projects, however, will be administered by the contract method or owner-builder method as set forth in this section.

(1) *Contract method.* This method of development will be used for all complex construction except in cases where owner-builder method is authorized. Development under this method is done in accordance with § 1924.6(a) of this subpart except as modified by this paragraph. All construction work will be completed under one written construction contract. Guide 1, "Contract Documents," of this subpart (available in any FmHA or its successor agency

under Public Law 103-354 office) is provided to assist FmHA or its successor agency under Public Law 103-354 personnel and applicants in assembling and reviewing contract documents for more complex construction such as that administered under this section.

(i) *Competitive bidding methods.* (A) All construction contracts must be awarded on the basis of competitive bidding unless an exception is granted in accordance with paragraph (e)(1)(vii) of this section thereby permitting contract negotiation. The applicant's architect should prepare the bidding documents. Public notice must be given inviting all interested bidders to submit a bid. Prospective bidders may be contacted asking for their bids; however, public notice is necessary so that all local contractors have the opportunity to submit bids.

(B) A bid bond is required from each bidder in the amount of 5 percent of the bid price as assurance that the bidder will, upon acceptance of the bid, execute the required contract documents within the time specified.

(C) The construction contract will be awarded based on the contract cost, and all conditions listed in the "Invitation to Bid."

(D) If advertising does not provide a satisfactory bid in the opinion of the applicant and FmHA or its successor agency under Public Law 103-354, the applicant shall reject all bids and will then be free to negotiate with bidders on anyone else to obtain a satisfactory contract. The following conditions must be met:

(1) The State Director determines that the original competitive bid process was handled in a satisfactory manner and that there is no advantage to advertising for competitive bid again.

(2) The requirements of paragraph (e)(1)(vii) of this section are met.

(E) If there is no agreement by FmHA or its successor agency under Public Law 103-354 and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal in accordance with subpart B of part 1900 of this chapter.

(ii) *Contract documents.* Contract documents will conform with recognized

professional practices as prescribed in this paragraph. Such contract documents will contain substantially the following:

- Item I Invitation for Bids (Form FmHA or its successor agency under Public Law 103-354 1924-5)
- Item II Information for Bidders
- Item III Bid
- Item IV Bid Bond
- Item V Agreement (Construction Contract)
- Item VI Compliance Statement (Form FmHA or its successor agency under Public Law 103-354 400-6)
- Item VII General Conditions
- Item VIII Supplemental General Conditions
- Item IX Payment Bond (exhibit F of this subpart)
- Item X Performance Bond (exhibit G of this subpart)
- Item XI Notice of Award
- Item XII Notice of Proceed
- Item XIII Drawings and Specifications
- Item XIV Addenda
- Item XV Contract Change Order (Form FmHA or its successor agency under Public Law 103-354 1924-7)
- Item XVI Labor Standards Provisions [Where applicable]
- Item XVII Monthly Employment Utilization Report (Form CC-257)
- Item XVIII Partial Payment Estimate (Form FmHA or its successor agency under Public Law 103-354 1924-18)
- Item XIX Builder's Warranty (Form FmHA or its successor agency under Public Law 103-354 1924-19)

(A) Substitution of term "architect" for "engineer" may be necessary on some of the forms. Other modifications may be necessary in some cases to conform to the nature and extent of the project. All such contract documents and related items will be concurred with by the State Director, with the assistance of OGC prior to the release of invitations to bid.

(B) Items listed as I through IV and item XI of paragraph (e)(1)(ii) of this section may be omitted when an exception to the competitive bidding requirement is granted in accordance with paragraph (e)(1)(vii) of this section, thereby permitting a negotiated contract.

(C) All negotiated contracts shall include a provision to the effect that the borrower, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the con-

tractor which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions.

(D) A provision of liquidated damages *will* be included in all contracts. The liquidated damage amount must be reasonable and represent the best estimate possible of how much interest or other costs will accrue on the loan, and also represent any loss of rent or other income which would result from a delay in the completion of the project beyond the estimated completion date.

(E) All contracts shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act prohibits anyone from inducing any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

(F) All contracts will contain a certification by the applicant indicating that there is not now nor will there be an identity of interest between the applicant and any of the following: Contractor, architect, engineer, attorney, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries unless specifically identified to FmHA or its successor agency under Public Law 103-354 in writing prior to the award of the contract. All contracts must also indicate that when any identity of interest exists or comes into being, the contractor agrees to have construction costs as reported to FmHA or its successor agency under Public Law 103-354 on Form 1924-13, "Estimate and Certificate of Actual Cost," audited by a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA) licensed prior to December 31, 1970, who will provide an opinion as to whether the Form FmHA or its successor agency under Public Law 103-354 1924-13 presents fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA or its successor agency under Public Law 103-354 regulations.

(G) All contracts on any form other than Form FmHA or its successor agency under Public Law 103-354 1924-6,

must contain the language of clause (D) of Form FmHA or its successor agency under Public Law 103–354 1924–6, which is available in all FmHA or its successor agency under Public Law 103–354 offices. The language of clause (D) of Form FmHA or its successor agency under Public Law 103–354 1924–6 sets forth the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity required by Executive Order 11246, the Equal Opportunity clause published at 41 CFR 60–1.4 (a) and (b), and the Standard Federal Equal Employment Opportunity Construction Contract Specifications required by Executive Order 11246. For contract forms other than Form FmHA or its successor agency under Public Law 103–354 1924–6, Form AD 767, “Equal Employment Opportunity Contract Compliance Notices,” which can be obtained from the Finance Office, should be attached and made a part of the contract.

(H) All contracts will contain a provision that they are not in full force and effect until concurred with by the State Director or the State Director’s delegate, in writing. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director’s delegate will concur in the contract form, content, and execution if acceptable, by including the following paragraph at the end of the contract:

The Farmers Home Administration or its successor agency under Public Law 103–354, as potential lender or insurer of funds to defray to costs of this contract, and without liability for any payments thereunder, hereby concurs in the form, content, and execution of this contract.

Date _____

FmHA or its successor agency under Public Law 103–354 Official

Title _____

(I) The requirements of §1924.6 (a)(11)(iv) of this subpart apply to all contracts or subcontracts in excess of \$10,000.

(iii) *Surety*. When multiple advances of loan or grant funds are utilized, surety that guarantees both payment and performance in the full amount of the contract will be provided in accordance

with §1924.6(a)(3)(ii) of this subpart. Exceptions to the surety requirements shall be governed by the following:

(A) In accordance with the guidance and recommendations of OMB Circulars A–102 and A–110, exceptions to the surety requirements of §1924.6(a)(3)(ii) of this subpart will not be granted for nonprofit organization or public body applicants.

(B) For loans or grants to applicants other than non-profit organizations or public bodies that are within the State Director’s approval authority, the State Director may, upon request of the borrower or grantee, grant exceptions to the surety requirements in accordance with the provisions of §1924.6(a)(3)(iii) of this subpart. Before granting such an exception, however, the State Director should be provided the following information from the proposed contractor in order to fully evaluate the experience and capabilities of the contractor:

(1) A resume indicating the contractor’s history, ability and experience.

(2) A current, dated and signed financial statement of the contractor’s operations indicating the payment status of accounts and any contingent liabilities that may exist. FmHA or its successor agency under Public Law 103–354 personnel will be responsible for analyzing the financial statement as to the sufficiency of the contractor’s financial capability to carry out construction. The financial strength must demonstrate the ability of the contractor to pay all bills prior to receiving periodic draws of funds from the lender.

(3) A credit report (obtained at no expense to FmHA or its successor agency under Public Law 103–354) attesting to the contractor’s credit standing.

(4) A listing of trade references that could be contacted to substantiate the contractor’s experience and good standing.

(5) Statements from owners for whom the contractor has done similar work, indicating the scope of the work and the owner’s evaluation of the contractor’s performance.

(C) For loans or grants to applicants other than non-profit organization or public bodies that are in excess of the State Director’s approval authority,

the State Director may request National Office authorization to grant one of the exceptions to the surety requirements as indicated in § 1924.6(a)(3)(iii) of this subpart. The following information must be submitted with the request to the National Office:

(1) An explanation of why interim financing is not available.

(2) An explanation of why the proposed contractor cannot obtain surety bonds meeting the requirements of § 1924.6(a)(3)(ii) of this subpart.

(3) The information listed in paragraph (e)(1)(iii)(B) of this section.

(4) The drawings and specifications for the proposed project, together with the comments of the State architect/engineer.

(5) The applicant's written request for an exception.

(6) An explanation of why the requirements of § 1924.6(a)(3)(iii) (A) or (B) of this subpart cannot be met in those cases where the State Director requests authorization to grant an exception as indicated in § 1924.6(a)(3)(iii)(C) of this subpart. When such a request is made, the documentation required of the contractor under the provision must also be forwarded.

(7) The State Director's recommendation.

(D) Adequate steps will be taken to protect the interests of the borrower and the government in accordance with the payment provisions of § 1924.6(a)(12)(i) of this subpart and any alternative as outlined in § 1924.6(a)(3)(iii)(c) of this subpart.

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4 (i) of this subpart, the contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must provide the applicant and FmHA or its successor agency under Public Law 103-354 with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (h) and (i) of subpart E of part 1944 of this chapter and § 1924.6(a)(3) of this subpart, or cost cer-

tification as required by paragraph (e)(1)(v) of this section, will be included in the proposed contract amount and shown under General Requirements on Form FmHA or its successor agency under Public Law 103-354 1924-13, which is available in all FmHA or its successor agency under Public Law 103-354 offices. FmHA or its successor agency under Public Law 103-354 personnel will be responsible for reviewing the estimates on Form FmHA or its successor agency under Public Law 103-354 1924-13 to determine if the dollar amounts total correctly, to assure that costs are categorized under their appropriate columns, and to confirm that the estimated costs for all line items are reasonable and customary for the State.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4(i) of this subpart, the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification using Form FmHA or its successor agency under Public Law 103-354 1924-13 as to the actual cost of the work performed in connection with the construction contract. The construction costs, as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13, must also be audited, in accordance with Government Auditing Standards, by a CPA, or LPA licensed on or before December 31, 1970. In addition, certain agreed upon procedures (available in any FmHA or its successor agency under Public Law 103-354 office) will be performed in accordance with Attestation Standards. In some cases, FmHA or its successor agency under Public Law 103-354 will contract directly with a CPA or LPA for the cost certification. In that event, documentation necessary to have the costs of construction certified by an FmHA or its successor agency under Public Law 103-354 contractor that they were the actual costs of the work performed, as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13, will be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA or its successor

agency under Public Law 103–354 contracts for the cost certification will be returned on the loan. FmHA or its successor agency under Public Law 103–354 personnel will utilize exhibit M of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) and Form FmHA or its successor agency under Public Law 103–354 1924–26, “Cost Certification Worksheet,” to assist in the evaluation of the cost certification process.

(A) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the borrower, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the borrower must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA or its successor agency under Public Law 103–354 1924–13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance, only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be co-mingled. The independent CPA or LPA shall report on the borrower’s assertion in accordance with the Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA). The borrower’s and the CPA or LPA’s reports on the accounting system shall be provided to FmHA or its successor agency under Public Law 103–354 by the borrower.

(B) Prior to final payment to anyone required to cost certify, a trade-item breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA or its successor agency under Public Law 103–354. Form FmHA or its successor agency under Public Law 103–354 1924–13

is the form of comparative breakdown that must be used, and contains the certifications required of the applicant and contractor prior to final payment. The amounts for builder’s general overhead, builder’s profit, and general requirements, respectively, shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the borrower. The amounts for general overhead, builder’s profit, and general requirements must be established prior to FmHA or its successor agency under Public Law 103–354 approving the construction contract and will not be changed during the course of construction. This applies to all contractors, subcontractors, material suppliers, or equipment lessors having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to the final payment to the contractor, if necessary, to assure that the amounts shown in the certificate of actual costs do not exceed the amounts represented in the contract cost breakdown. Reduction in the builder’s profit, and general overhead if needed, will counterbalance any increase reflected in the contract costs. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA or its successor agency under Public Law 103–354 as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases and/or decreases. The State Director may require documentation for increases and/or decreases of less than 15 percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) The CPA or LPA audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such

other auditing procedures of the borrower and the contractor (and any subcontractor, material supplier or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13. The CPA or LPA shall also perform the additional agreed upon procedures specified by FmHA or its successor agency under Public Law 103-354 (available in any FmHA or its successor agency under Public Law 103-354 office), performed in accordance with Attestation Standards, for the applicant and the contractor (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract.

(D) Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion concerning whether the construction costs, as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13, present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA or its successor agency under Public Law 103-354 regulations.

(E) In some cases, cost certification will be obtained by FmHA or its successor agency under Public Law 103-354 through direct contract with the CPA or LPA. The borrower and his/her CPA or LPA will cooperate fully with the contract CPA or LPA by providing all documentation necessary to conduct the certification. FmHA or its successor agency under Public Law 103-354 reserves the right to determine, upon receipt of the certified Form FmHA or its successor agency under Public Law 103-354 1924-13 and the auditor's report, whether they are satisfactory to FmHA or its successor agency under Public Law 103-354. If not satisfactory to FmHA or its successor agency under Public Law 103-354, the borrower will be responsible for providing additional information.

(F) There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(G) Forms FmHA or its successor agency under Public Law 103-354 1944-30, "Identity of Interest (IOI) Disclosure Certificate" and FmHA or its successor agency under Public Law 103-354 1944-31, "Identity of Interest (IOI) Qualification Form," provide written notification to the borrower that willful and intentional falsification of cost certification documents will result in debarment of all violators in accordance with the provisions of FmHA or its successor agency under Public Law 103-354 Instruction 1940-M (available in any FmHA or its successor agency under Public Law 103-354 office). These forms require the disclosure of all identities of interest associated with project construction, certify the entity's ability to provide the contracted service, and cite the penalties for failure to disclose or falsify such certification. Each applicant/borrower will be required to complete and sign the forms (available in any FmHA or its successor agency under Public Law 103-354 office).

(H) Subcontracting development work.

(I) Contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in American Institute of Architects (AIA) documents: " * * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition, contractors who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(i) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor,

material supplier, or equipment lessor, and/or

(ii) Seventy-five percent or more with three or fewer subcontractors, material suppliers and/or equipment lessors.

(2) NOTE: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(3) How to apply rule:

(i) The 50 percent rule will apply when division of the amount of the largest subcontract by the contract sum of the construction contract results in more than 50 percent.

(ii) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the contract sum of the construction contract results in 75 percent or more.

(I) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA or its successor agency under Public Law 103-354 1944-31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA or its successor agency under Public Law 103-354 Instruction 1940-M (available in any FmHA or its successor agency under Public Law 103-354 office).

(vi) *Method of payments.* Partial payments may be requested in accordance with the terms of the construction contract on Form FmHA or its successor agency under Public Law 103-354 1924-18, "Partial Payment Estimate," or other professionally recognized form that contains the architect's certification, approval of the owner, and conditional acceptance of FmHA or its successor agency under Public Law 103-354 as shown in Form FmHA or its successor agency under Public Law 103-354 1924-18.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. exhibit B of subpart E of part 1944 of this chapter shall be used to inform the interim lender that FmHA or its successor agency under Public Law 103-354 will not close its loan until the project is substantially complete, ready for occupancy, evidence is furnished indicating that all bills have been paid or will be paid at loan closing for work completed on the project, all inspections have been completed and all required approvals have been obtained from municipal and governmental authorities having jurisdiction over the project.

Upon presentation of proper partial payment estimates approved by the applicant and accepted by FmHA or its successor agency under Public Law 103-354, the interim lender may advance construction funds in accordance with the payment terms of the contract. It is suggested that partial payments not exceed 90 percent of the value of work in place and materials suitably stored on site.

(B) When interim financing is not available, payments will be made in accordance with § 1924.6(a)(12) of this subpart.

(vii) *Exception to competitive bidding—*
(A) *For all applicants.* An applicant may negotiate a construction contract provided the State Director grants an exception and documentation shows that:

(1) The contract price is competitive with other projects similar in construction and design being built in the area.

(2) The proposed contractor is experienced in construction of projects of similar size, scope, and complexity, and is recognized as a reliable builder.

(3) The proposed development work meets all requirements of this subpart.

(4) If appropriate for nonprofit organizations and public bodies, the applicant provides a copy of a duly authorized resolution by its governing body requesting FmHA or its successor agency under Public Law 103-354 to permit awarding the construction contract without formal bidding.

(5) The applicant is permitted by state law, local law and/or organizational by-laws to negotiate a construction contract.

(6) The requirements of paragraphs (e)(1) (ii), (iii), (iv) and (v) of this section are met.

(B) In considering an exception to competitive bidding, the following additional steps will be taken in all cases.

(1) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

(2) If after the full review by the State Office staff, the State Director determines that the negotiated contract price is not competitive with other similar projects in construction and design being built in the area, the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(3) If there is no agreement by FmHA or its successor agency under Public Law 103-354 and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal in accordance with subpart B of part 1900 of this chapter.

(C) Any requests for exceptions to competitive bidding that are not covered in this section may be submitted to the National Office for consideration.

(viii) *Exception to contract method—public body.* With the approval of the National Office, the State Director may grant to a public body an exception to the requirement for using contract method construction under the following circumstances:

(A) The loan or grant is for repair or rehabilitation of existing facilities and it is not practicable to perform all work by the contract method.

(B) The applicant has the managerial ability and qualified employees necessary to complete the work successfully.

(C) That applicant submits a written request to the District Director indicating:

(1) The scope of work and construction timetable;

(2) What phases of work can be contracted and what cannot;

(3) Why is it not practicable to contract all phases;

(4) Management ability and employee qualifications for performing the work;

(5) Proposed method of fund control and frequency of payments;

(6) How changes in scope of work and construction timetable will be approved; and,

(7) Proposed method of certifying progress and requesting payments.

(D) The request, recommendations of the District Director, appropriate members of the State Office staff and the State Director and the application file will be sent to the National Office.

(2) *Owner-builder method.* This method of development is used only when requested by profit or limited profit RRH applicants when the applicant or any of its controlling principals (such as stockholders, members, partners other than limited partners, directors, or officers), are general contractors by profession, and will serve as the builder of the project without a written construction contract. The State Director may make an exception to the contract method of construction and authorize proceeding by the owner-builder method of construction in accordance with the provisions of this section if the amount of the loan(s) does not exceed the State Director's approval authority. For projects over the State Director's authority, prior written consent of the National Office is required. In such cases, the drawings, specifications, cost estimates, copy of the State Architect/Engineer's review and detailed information on the applicant's qualifications will be submitted to the National Office along with the State Director's recommendations.

(i) The applicant's request to construct a project by the owner-builder method of construction shall be in the form of a letter giving specific and detailed information concerning the owner-builder's proposal, and the qualifications and past experience of the owner-builder. The following information must be included with the request:

(A) A resume indicating the owner-builder's history, ability, and experience.

(B) Dated and signed financial statements on the owner-builder's operation (including balance sheets and statements of income and expense) from current and prior years indicating the payment status of the owner-builder's accounts and any contingent liabilities that may exist. FmHA or its successor agency under Public Law 103-354 personnel will be responsible for analyzing the financial statement as to the sufficiency of the owner-builder's financial capability to carry out construction. The financial strength must demonstrate the ability of the owner-builder to pay all bills prior to receiving periodic draws of funds from the lender.

(C) A written, dated, and signed statement agreeing to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(D) A credit report (obtained at no expense to FmHA or its successor agency under Public Law 103-354) attesting to the owner-builder's credit standing.

(E) A listing of trade references that could be contacted to substantiate the owner-builder's experience and good standing.

(F) Statements from other persons for whom the owner-builder has done similar work, indicating the scope of the work and that person's evaluation of the owner-builder's performance.

(G) A current, dated, and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the applicant/owner-builder. Form FmHA or its successor agency under Public Law 103-354 1924-13 will be used for this purpose. If cost certification services are required by FmHA or its successor agency under Public Law 103-354, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier, or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) Prior to the start of construction, the owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the owner-builder, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the owner-builder must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA or its successor agency under Public Law 103-354 1924-13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance, only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be co-mingled. The independent CPA or LPA shall report on the owner-builder's assertion in accordance with the Standards for Attestation Engagements of the AICPA. The owner-builder's and the CPA or LPA's reports on the accounting system shall be provided to FmHA or its successor agency under Public Law 103-354 by the owner-builder.

(I) A written, dated, and signed statement agreeing to permit U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, and records which are directly pertinent to the specific Federal program for the purpose of making audit, examination, excerpts and transcriptions.

(ii) In order to grant an exception to the contract method of construction and proceed with the owner-builder method of construction, the State Director must determine that the following conditions exist:

(A) The applicant or at least one of its principals is a fully qualified and licensed (if necessary under applicable

local law) builder by profession, has adequate experience in constructing the type of units proposed as well as projects of similar size, scope, and complexity and will be able to complete the work in accordance with the FmHA or its successor agency under Public Law 103-354 approved drawings and specifications.

(B) Based upon the information presented in the applicant's financial statements, the applicant is presently able and is likely to continue to be able to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(C) The total development cost of the project does not exceed that which is typical for similar type projects in the area. The total development cost recognized by FmHA or its successor agency under Public Law 103-354 for each individual case will be determined by the MFH Coordinator with the advice of the State Architect.

(D) The owner-builder has provided sufficient information on all contracts or subcontracts in excess of \$10,000 to permit compliance with § 1924.6(a)(11)(iv) of this subpart.

(iii) In addition to the requirements for the State Director to authorize the owner-builder method of construction as indicated in § 1924.13(e)(2) (i) and (ii) of this subpart, the following additional steps will be taken by the State Director.

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the construction cost is reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

(B) If, after the full review by the State Office staff, the State Director determines that the construction cost is not competitive with other similar projects in construction and design being built in the area, the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(C) If there is no agreement by FmHA or its successor agency under Public Law 103-354 and the applicant as to construction cost and the applicant is not agreeable to any of the aforementioned alternatives, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal, in accordance with subpart B of part 1900 of this chapter.

(iv) The development cost of the project may include a typical allowance for general overhead, general requirements and a builder's profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's profit, general overhead, and general requirements which exceed the amounts represented on their cost breakdown.

(v) Under no circumstances will loan funds be used to pay the owner/builder or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount be placed in the reserve account.

(vi) The plan and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(vii) When architectural services are required by § 1924.13(a) during the construction and warranty phases they must be provided by an architect who has no identity of interest with the applicant/owner-builder. The services to be rendered during the construction and warranty phases include, but are

not limited to inspections, changes in the scope of project or work to be done, administration of construction accounts, rejection of work and materials not conforming to the FmHA or its successor agency under Public Law 103-354 approved drawings and specifications, and other appropriate service listed in § 1924.13(a)(5) (v) and (vi) of this subpart.

(viii) The applicant/owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest as defined in § 1924.4(i) of this subpart must each provide certification as to the actual cost of the work performed in connection with the construction of the project on Form FmHA or its successor agency under Public Law 103-354 1924-13 prior to final payment. The construction costs, as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13, must be audited by a CPA, or LPA licensed on or before December 31, 1970, in accordance with Government Auditing Standards, and certain agreed upon procedures (available in any FmHA or its successor agency under Public Law 103-354 office) performed in accordance with Attestation Standards. In some cases, FmHA or its successor agency under Public Law 103-354 will contract directly with a CPA or LPA for the cost certification. In that event, documentation necessary to have the costs of construction certified by an FmHA or its successor agency under Public Law 103-354 contractor that they were the actual costs of the work performed, as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13, will be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA or its successor agency under Public Law 103-354 contracts for the cost certification will be returned on the loan.

(A) The CPA or LPA's audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such other auditing procedures of the applicant/owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed,

services rendered, and materials supplied in connection with the construction of the project he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13. Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion as to whether the construction costs as reported on Form FmHA or its successor agency under Public Law 103-354 1924-13 present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA or its successor agency under Public Law 103-354 regulations. FmHA or its successor agency under Public Law 103-354 reserves the right to determine, upon receipt of the certified Form FmHA or its successor agency under Public Law 103-354 1924-13 and the auditor's report, whether they are satisfactory to FmHA or its successor agency under Public Law 103-354. At a minimum, the CPA or LPA shall also perform any additional agreed upon procedures (available in any FmHA or its successor agency under Public Law 103-354 office) specified by FmHA or its successor agency under Public Law 103-354, performed in accordance with Attestation Standards, of the owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction. There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(B) Prior to final payment to anyone required to cost certify, FmHA or its successor agency under Public Law 103-354 must be provided with a certification and a trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this

section. Form FmHA or its successor agency under Public Law 103-354 1924-13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amounts for builder's general overhead, general requirements, and builder's profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i)(G) of this section for the owner-builder or any subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner-builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the amounts represented on the cost breakdown. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA or its successor agency under Public Law 103-354 as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases or decreases. The State Director may require documentation for increases or decreases of less than 15 percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) Subcontracting development work.

(I) Owner-builders will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in AIA documents: "* * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition, owner-builders who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(i) More than 50 percent of the total cost of the building construction is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

(ii) Seventy-five percent or more with three or fewer subcontractors, material suppliers, and/or equipment lessors.

(2) NOTE: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(3) How to apply rule:

(i) The 50 percent rule will apply when division of the amount of the largest subcontract by the total amount of the building cost results in more than 50 percent.

(ii) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the total building cost results in 75 percent or more.

(D) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA or its successor agency under Public Law 103-354 1944-31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA or its successor agency under Public Law 103-354 Instruction 1940-M (available in any FmHA or its successor agency under Public Law 103-354 office).

(ix) Requests for payment for work performed by the owner-builder method, shall be permitted to the FmHA or its successor agency under Public Law 103-354 District Director for review and approval prior to each advance of funds in order to insure that funds are used for authorized purposes. Requests for payment shall be made on Form FmHA or its successor agency under Public Law 103-354 1924-18 or other professionally recognized form containing the following certification to FmHA or its successor agency under Public Law 103-354:

The undersigned certifies that the work has been carefully inspected and to the best

§ 1924.13

7 CFR Ch. XVIII (1–1–06 Edition)

of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

(Name of Architect) _____

By: _____

(Title) (Date) _____

Approved by Owner's Representative: By: _____

(Title) _____

Accepted by FmHA or its successor agency under Public Law 103-354 Representative: By: _____

(Title) _____

The review and acceptance of partial payment estimates by FmHA or its successor agency under Public Law 103-354 does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the plans and specifications.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit B of subpart E of part 1944 of this chapter shall be used to inform the interim lender that FmHA or its successor agency under Public Law 103-354 will not close its loan until the project is complete, ready for occupancy, evidence is furnished indicating that all bills have been paid for work completed on the project, all inspections have been completed and all required approvals have been obtained from any governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the applicant's architect, and accepted by FmHA or its successor agency under Public Law 103-354, the interim lender may advance construction funds in accordance with the provisions of this section. It is suggested that the partial payment not exceed 90 percent of the value of work in place and material suitably stored on site.

(B) If interim financing is not available, partial payments not to exceed 90 percent of the value of work in place and materials suitably stored on site may be made to the owner-builder for that portion of the estimated cost of

development guaranteed by a letter of credit or deposits meeting the requirements of § 1924.6(a)(3)(iii) (A), (B) or (C) of this subpart. Partial payments may not exceed 60 percent of the value of work in place in all other cases. The determination of the value of work in place will be based upon an application for payment containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the borrower's architect, and accepted by FmHA or its successor agency under Public Law 103-354. Prior to receiving the first partial payment, the owner-builder must submit a schedule of prices or values of the various trades or phases of the work aggregating the total development cost of the project as required in § 1924.13(e)(2)(i) (G) and (H) of this subpart. Each application for payment must be based upon this schedule, and show the total amount owed and paid to date for materials and labor procured in connection with the project. With each application for payment, the owner-builder must also submit evidence showing how the requested partial payment is to be applied, evidence showing that previous partial payments were properly applied, and a signed statement from the applicant's attorney, title insurance company, or local official in charge of recording documents certifying that the public records have been searched and that there are no liens of record. When the District Director has reason to believe that partial payments may not be applied properly, checks will be made payable to persons who furnish materials and labor for eligible purposes in connection with the project.

(x) Under no circumstances shall funds be released for final payment or to pay any items of the builder's profit until the project is 100 percent complete, ready for occupancy, and the owner-builder has completed and properly executed Form FmHA or its successor agency under Public Law 103-354 1924-13 or complied with the cost certification procedures of § 1924.13(e)(2)(viii) of this subpart.

[52 FR 8002, Mar. 13, 1987; 52 FR 26139, July 13, 1987, as amended at 53 FR 2155, Jan. 26, 1988; 59 FR 6882, Feb. 14, 1994; 61 FR 56116, Oct. 31, 1996]